HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP S/S No. 551/01

(Old No. 32862/2000)

Shashank Sharma

vs

State of U.P. and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 30.08.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 551 of 2001 (SS)
(Old No. 32862/2000)

Shashank Sharma son of Sri Ram Chandra Trikha,
Mohalla Shivpuri, Near Shiv Mandir, Laxar District
Haridwar ..... Petitioners

Versus

1. State of U.P.
2. Zila Basic Shiksha Adhikari, Haridwar
3. Alka Rani d/o Late Kadam Singh, assistant Clerk in the Office of Basic Shiksha Adhikari, Haridwar
4. Manoj Kumar s/o Sri Satyaveer Singh Chauhan, Assistant Clerk, Nagar Shiksha Adhikari, Haridwar

..... Respondents

Sri Bipin Mohan Pingal, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 30.8.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 26.12.2000 passed by the respondent and further a writ of mandamus directing the respondent to consider the appointment of the petitioner on class III post.

Briefly stated the mother of the petitioner late Smt. Kiran Bala was working as Assistant Teacher in Basic School Bahadurpur, Khadar, Laxar, Haridwar, who died in harness on 23.6.98. The petitioner made an application on 12.11.1998 before the respondents for his appointment on compassionate ground on a class III post. On 28.5.99 respondent passed the order appointing the petitioner on the post of peon though the

petitioner having passed Intermediate and was entitled to be appointed on class III post.

On 16.9.2000 the petitioner submitted the representation before the respondent no. 2 for appointing him on the class III post but no action has been taken on the representation of the petitioner.

The petitioner has submitted that at the time of his appointment on class IV post, there were three posts of class III lying in the respondent department and vide order dated 15.12.1999, respondent no.3 Km. Alka Rani and respondent no. 4 Manoj Kumar were appointed on the posts of Assistant Clerk by the respondents under U.P. Recruitment of Dependents of Govt. Servants Dying in Harness Rules. The petitioner has also submitted that one Sri Brahma Singh was also given appointment on the post of Clerk.

According to the petitioner there are still some vacant posts in Class III in the department and he may be given appointment against one of these posts.

No Counter affidavit has been filed on behalf of the respondents although opportunities were given to them.

Rule 5 of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974, provides the entitlement of the petitioner to get the employment. Rule 5 of the said Rules is quoted below:

5. Recruitment of a member of the family of the deceased-*(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government*

or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purpose, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

(i) fulfils the educational qualifications prescribed for the post.

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant.

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

Under the provisions of Rule 5, the dependant of a deceased employee is entitled for the appointment on a post according to his qualification. It is not the sweet will of the appointing authority to give appointment either on class III post or class IV.

The counsel for the petitioner relied upon the observation made by a Division Bench of Allahabad High Court in a similar

case in 1994 (24) A.L.R. 11 Rajesh Kumar Morya vs. District Judge, Varanasi & others (II C.) and has observed as under:

Tkuin U;k;k/kh'k }kjk tks vk/kkj ;kph dh fjV ;kfpdk dk fojks/k djds fy;k x;k gS ;g vk/kkj fof/klEer ugha gS fu;ekoyh ds fu;e ‡ dk fuoZpu U;k;ky; us cgqr ls fu.kZ;ksa esa fd;k gSA mijksDr fu.kZ;ksa esa U;k;ky; us ;g vo/kkfjr fd;k gS fd fu;ekoyh ds fu;e ‡ ds vUrZxr vH;FkhZ viuh ;ksX;rk ds vuq:I in ij fu;qfDr fd;s tkuus dk vf/kdkjh gSA fu;qfDr vf/kdkjh bl ckr ds fy, LorU= ugha gS fd ;fn vH;FkhZ r`rh; Js.kh ds deZpkfj;ksa ds in dh ;ksX;rk j[krk gS rks mldks prqFkZ Js.kh deZpkjh ds :i esa fu;qDr djsA

fjV ;kfpdk la0 „†Š‰0 o"kZ ƒ‹‹ƒ jkds'k jk; cuke funs'kd ek/;fed f'k{kk ,oa vU; ¼fu.khZr fnukad „‹-Š-‹„½ esa bl U;k;ky; us fuEuor fu.kZ; fd;k gS%

"In the instant case, when the petitioner is entitled to be appointed and possessed requisite qualification for a class III post, there is no plausible justification to keep his appointment pending on the ground that post in class III is vacant. If no suitable post is there, it has to be created to adjust the petitioner."

- **********
- bl U;k;ky; ds fu.kZ; jkts'k flag ¼mijksDr½ ds vk/kkj ij deZpkjh dh e`R;q lEcU/kh vkink vius ij inl`tu Loa; gks tkrk gS vkSj tc rd dksbZ in fjDr u gks rc rd vf/kla[; l`ftr in ij e`rd ds vkfJr dks mDr in ij lek;ksftr fd;k tkuk pkfg,A

In view of principle of law enumerated above, the respondent was not justified in appointing the petition in class

IV post, whenever he possesses requisite qualification for class III post."

Counsel for the petitioner has submitted that the respondents have acted arbitrarily and discriminately by appointing the petitioner on class IV post while at that time there were two posts of Assistant Clerks were vacant in the respondent department at Haridwar. The petitioner filed supplementary affidavit and submitted information in this regard obtained by him from the Additional District Education Officer (Basic), Haridwar, under Right to Information Act. This letter also shows that Sri Brahmpal, Ms. Alaka Rani and Sri Manoj Kumar who were appointed as Assistant Clerk having educational qualification as Intermediate.

The extract of the letter dated April 19, 2006 is quoted below:

fo"k;% lwpuk vf/kdkj vf/kfu;e „00‡ ds vUrZxr lwpuk miyC/k djkus fo"k;d

egksn;]

mi;qZDr fo"k;d vkids i=kad lwp0vf/k0 0‡@„†„‡@„00‡-0ˆ fnukad ekpZ „‹] „00ˆ ,oa i=kad lwp0vf/k0 vf/k0 0‡@‡ƒ„@„00‡&0ˆ fnukad vizSy ƒŠ] „00ˆ ds lUnHkZ esa vki }kjk pkgh x;h lwpuk rS;kj dj vkidh lsok esa izsf"kr dh tk jgh gS

ƒ- ebZ „Š] ƒ‹‹‹ dks tuin gfj}kj ds csfld f'k{kk ifj"kn uxj

{ks= esa lgk;d fyfid ds nks in fjDr FksA

Dz0la0	fudk;	Lohd`r in	Dk;Zin	fjDr
ƒ	uxj {ks=	‰	ˆ	ƒ
2	Xkzkeh.k {ks=	‡	†	ƒ

2- ¼d½ Jh czgeiky iq= Jh cyjke lgk;d fyfid dk;kZy; mi[k.M f'k{kk vf/kdkjh [kkuiqj dh vf/kdr ;ksX;rk b.VjehfM,V gSA

2- ¼[k-½ vydk jkuh iq=h Jh dne flag lgk;d fyfid dk;kZy; mi[k.M f'k{kk vf/kdkjh Hkxokuiqj dh vf/kdre "kSf{kd ;ksX;rk b.VjehfM,V gSA

2- ¼x-½ Jh eukst dqekj iq= Jh lR;ohj flag lgk;d fyfid] dk;kZy; uxj f'k{kk vf/kdkjh gfj}kj dh vf/kdre 'kSf{kd ;ksX;rk b.VjehfM,V gSA

Hkonh;
dqoj flag jkor
vij ftyk f'k{kk vf/kdkjh ¼csfld½]
gfj}kj

In view of above, the respondents are directed to consider the petitioner in class III post, within one month after obtaining certified copy of this order. However, the order passed on 26.12.2000 shall be subject to the final order passed by the authority concerned.

Accordingly, the writ petition is disposed of. No order as to costs.

Dated: 30.8.2006 **Rajesh Tandon, J.**

*Dhyani